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State v. Holt Appellant's Reply Brief Dckt. 44125

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44125
)	
v.)	KOOTENAI CO. NO. CR 2015-8572
)	
JACQUELINE MARIE HOLT,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE FRED M GIBLER
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Jacqueline Marie Holt appeals from the district court's denial of her motion to suppress evidence found in a search of her purse. In the district court, she asserted that an officer illegally searched her purse following a traffic stop in which the driver of the car in which she was a passenger was arrested for driving under the influence. Ms. Holt argued that the search was illegal because the officer ordered her to leave her purse in the car. The district court denied the motion, and Ms. Holt entered a conditional plea of guilty, preserving her right to appeal the denial of her motion to suppress.

In her Appellant's Brief, Ms. Holt argued that the district court erred when it found that the officer's directive to leave her purse in the car was a request as opposed to an order. In response, instead of attempting to rebut Ms. Holt's argument that the district court's factual finding on this issue was not supported by substantial evidence, the State relies on a red herring. It asserts that that the officer was actually referring to Ms. Holt's wallet and not her purse. It also asserts that the precedent holding that law enforcement cannot create a right to search a purse by ordering someone to leave the purse in a car does not apply to this case. This reply brief addresses the flaws in those arguments.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Ms. Holt's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated here by reference.

ISSUE

Did the district court err when it denied Ms. Holt's motion to suppress?

ARGUMENT

The District Court Erred When It Denied Ms. Holt's Motion To Suppress

Ms. Holt's purse was searched after Officer Robinson ordered her to leave it in the car and then ordered her to get out of the car. Therefore, the district court erred when it denied Ms. Holt's motion to suppress. In its Respondent's Brief, the State argues that Ms. Holt's purse was lawfully searched because Officer Robinson did not "force" her to leave her purse in the car, and therefore this case is analogous to cases where the defendant left her purse in the vehicle voluntarily. (Resp. Br., pp.7-16.)

The State, however, fails to respond to Ms. Holt's argument that—because Officer Robinson's directives to both the driver and to Ms. Holt contained the same language pattern throughout the traffic stop—the district court erred when it found that Officer Robinson's statement regarding her purse was not an order. (See App. Br., pp.8-9.) Instead, the State argues that Officer Robinson was actually talking about Ms. Holt's wallet and not her purse. (Resp. Br., pp.9, 12.) This sidesteps the issue of whether the district court erred when it found that Officer Robinson's statement was not an order, and it is not accurate.

In the district court, the prosecutor never argued that Officer Robinson was referring only to Ms. Holt's wallet, and the district court never made such a factual finding. On the contrary, it specifically found that Officer Robinson was referring to Ms. Holt's purse. It stated, "After examining the defendant's identification, he told the defendant, *referring to her purse*, 'All right. Go ahead and you can leave that in there . . .'" (10/15/15 Tr., p.7, Ls.11-14 (emphasis added).) Indeed, the district court's analysis focused only on Ms. Holt's purse and whether Officer Robinson's directive was an order

to leave it in the car. (10/15/15 Tr., p.7, L.3 – p.16, L.15.) Moreover, as the State acknowledges, when Ms. Holt returned to the car to get her identification for Officer Robinson, she took her wallet out of her purse, which was sitting at her feet. (Resp. Br., p.8; Video Part Two at 0:35 – 1:25.) After she showed her identification to Officer Robinson, she returned the wallet to her purse.¹ (Video Part Two at 4:40 – 4:47.) Therefore, the State’s argument regarding the wallet is a red herring.

The State’s only genuine response to the issue of whether Officer Robinson’s directive was an order, is a repetition of the district court’s finding, and the argument that “Holt’s assertion that Officer Robinson ‘ordered’ her to leave her purse in the car is belied by the record.” (Resp. Br., pp.9, 12.) And the State does not attempt to rebut the argument that when Officer Robinson repeatedly told the women in the car to “go ahead” and step out, or “go ahead” and stand somewhere, he was indeed giving orders, and thus the district court’s finding on this issue was not supported by substantial evidence. (App. Br., pp.7-9.)

The State then relies on its conclusory statement to argue that Ms. Holt’s situation was analogous to cases where defendant’s purses were left in vehicles voluntarily. (Resp. Br., pp.9-12.) It points out that, in the briefing before the district court, Ms. Holt argued that Officer Robinson “asked” her to leave her purse in the case. (Resp. Br., p.12.) It neglects to mention, however, that Ms. Holt concluded that brief by arguing that Officer Robinson “not only ordered Ms. Holt out of the vehicle but told her

¹ The State asserts that Ms. Holt dropped her wallet at this point. (Resp. Br., p.9.) However, a close review of the video shows that she put her wallet in her purse, and she only had her license in her hand after she appeared to pick up something off the ground while she was getting out of the car. (Video Part Two at 4:35 – 4:55.)

to leave her purse behind.” (R., p.52.) More importantly, the district court clearly understood Ms. Holt’s argument to hinge on whether Officer Robinson ordered her to leave her purse in the car. Otherwise, it would not have addressed the issue at all. (See 10/15/15 Tr., p.16, Ls.4-17.) Therefore, this is also an irrelevant argument.²

Finally, the State asserts that *State v. Newsom*, 132 Idaho 698 (1998) is distinguishable from this case because Ms. Holt did not have her purse in her lap, and the second officer in *Newsom* told Ms. Newsom to leave her purse in the car after the first officer told her to get out of the car. (Resp. Br., pp.13-14.) These are hollow distinctions. In fact, the State contradicts itself regarding the first alleged distinction. When referencing *State v. Boyd*, 64 P.3d 419 (Kan. 2003), it argues, “The holding in *Boyd* is no different than the holding in *Newsom*” (Resp. Br., p.16.) But the defendant’s purse in *Boyd* was at her feet, just as it was in this case. Therefore, the holding in *Boyd* is different. *Boyd* held that it did not matter that the purse was not in Ms. Boyd’s lap because there was “no question the purse was Boyd’s personal property, in her possession, and under her control.” *Id.* at 427. Therefore, as the *Boyd* court put it, the location of the purse was a “distinction without a difference.” *Id.*

In regard to the second alleged distinction, it is true that the first officer in *Newsom* told Ms. Newsom to get out of the car, and the second officer told her to leave her purse. But this is also a meaningless distinction. Here, Officer Robinson simply changed the sequence of commands; he told Ms. Holt to leave her purse in the car and

² The State does not respond to the argument that the district court erred when it held that, if Officer Robinson’s statement was an order, Ms. Holt’s purse was lawfully searched because she left it in the car when she originally was told to get out of the car. (App. Br., pp.10-12.) As such, the State apparently concedes this issue.

then told her to get out. (10/15/15 Tr., p.7, Ls.11-16; Video Part Two at 4:40-4:50.) As argued in the Appellant's Brief, this had the same effect as the second officer's order in *Newsom*, and in fact actually prevented Ms. Holt from even attempting to take her purse with her. (App. Br., pp.9-10.)

Ms. Holt continues to assert that the district court erred when it found that Officer Robinson did not order her to leave her purse in the car before ordering her to get out of the car. At that point, Officer Robinson had no authority to order Ms. Holt to leave her purse in the car. Probable cause to search had not been established, and the driver of the car had not been arrested. Therefore, Officer Robinson attempted to create a right to search the purse by ordering Ms. Holt to leave it in the car.

CONCLUSION

Ms. Holt respectfully requests that this Court vacate the district court's order of judgment and commitment and reverse the order which denied her motion to suppress.

DATED this 2nd day of May, 2017.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of May, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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E-MAILED BRIEF

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_____/s/_____
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RPA/eas